

PT 08-9

Tax Type: Property Tax

Issue: Educational Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**NURTURING DEVELOPMENT &
LEARNING CENTER,
APPLICANT**

v.

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

No. 06 PT 0088

Real Estate Tax Exemption

For 2005 Tax Year

P.I.N. 29-11-304-017-0000

30-08-400-052-0000

Cook County Parcels

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. Timothy M. Hughes, Lavelle Law, Ltd., on behalf of Nurturing Development & Learning Center; Mr. George Foster, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS:

This proceeding raises the issue of whether two child care centers, located on Cook County Parcel Index Numbers 29-11-304-017-0000 and 30-08-400-052-0000, qualify for exemption from 2005 real estate taxes under 35 ILCS 200/15-35(c), wherein all property used for educational purposes and not leased or otherwise used with a view to profit is exempt and/or 35 ILCS 200/15-65(a), wherein all property owned by charitable institutions and used for charitable and beneficent purposes and not leased or otherwise used with a view to profit, is exempt.

The controversy arises as follows: On May 18, 2006, Nurturing Development & Learning Center (hereinafter “Nurturing,”) filed an Application for Property Tax Exemption for each P.I.N. for tax year 2005 with the Cook County Board of Review (hereinafter the “Board”). The Board reviewed the applications and subsequently recommended to the Illinois Department of Revenue (hereinafter the “Department”) that both exemption requests be denied. The Department accepted the Board’s recommendation in two determinations, both dated August 30, 2006, finding that both P.I.N.S were not in exempt ownership or exempt use. Dept. Ex. No. 1. On October 28, 2006, Nurturing filed a timely request for a hearing as to the denial of the exemptions.

On December 19, 2007, Nurturing presented evidence at a formal hearing with Ms. Medina Bailey, Executive Director of Nurturing, and Mr. Henry Simmons, Certified Public Accountant for Simmons & Simmons, testifying. At the hearing, Nurturing withdrew its protest of the denial of exemption for P.I.N. 30-08-400-052-0000, and therefore the only issue to be determined at the hearing was whether P.I.N. 29-11-304-017-0000 (hereinafter the “subject property”) was in exempt ownership or use during the 2005 assessment year. Tr. pp. 6-7. Following submission of all evidence and a careful review of the record, it is recommended that the Department’s determination that Cook County P.I.N. 29-11-304-017-0000 was not in exempt ownership or use during 2005 should be affirmed.

FINDINGS OF FACT:

1. Dept. Ex. No. 1 establishes the Department’s jurisdiction over this matter and its position that Cook County P.I.N.S 29-11-304-017-0000 and 30-08-400-052-0000 were not in exempt ownership or use in 2005. Tr. pp. 9-11; Dept Ex. No. 1.

2. Cook County P.I.N. 29-11-304-017-000, at issue in this proceeding, is located at 835 Sibley Boulevard in South Holland. Dept. Ex. No. 1.
3. Nurturing filed Articles of Incorporation under the Illinois “General Not For Profit Corporation Act” on June 30, 2002. Its “Purpose,” as stated in the Articles, is to “provide educational and child care services for infants aged 6 weeks to 12 years old.” Nurturing does not have shareholders. Tr. pp. 15-16, 84; App. Ex. No. 3.
4. Nurturing operates under “Bylaws” dated June 3, 2002, which state that its “Purpose” is to “promote, operate and conduct a learning environment for children age’s 15 months to 12 years of age.” “All funds collected shall be used for the above-stated purpose, and in no event shall there be any profit to the individual members or Directors.” “Any parent/guardian warranting a waiver of fees due to significant hardship of employment or other [*sic*] shall be granted.” Tr. pp. 16-17; App. Ex. No. 4.
5. Nurturing is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 17-18; App. Ex. Nos. 5 and 26.
6. Nurturing purchased P.I.N. 29-11-304-017-0000 on January 31, 2005. The subject property was formerly a “Baker’s Square” and had been empty for several years. Tr. pp. 21-22, 29-30, 47; App. Ex. No. 7.
7. On September 20, 2004, prior to the purchase of the property, Nurturing sent out a “Notice of Public Hearing” to property owners notifying them of a public hearing to be held October 6, 2004, concerning the proposed use of the property. Tr. pp. 28-30; App. Ex. No. 10.

8. On September 23, 2004, prior to the purchase of the property, C.B. Designs, Carey Buxbaum, Architect, sent a proposal to Ms. Bailey for architectural services to be rendered in connection with the remodeling and conversion of the building on the subject property. The fee for the proposal was \$2,600. Tr. pp. 30-31; App. Ex. No. 11.
9. On October 14, 2004, prior to the purchase of the property, Ms. Bailey received an “Estimate,” in the amount of \$128,480, from Delani Construction, for conversion of the building on the subject property into use as a child care center. Tr. pp. 31-32; App. Ex. No. 12.
10. On November 4, 2004, prior to the purchase of the property, Nurturing received a “Conditional Use Permit” from the Village of South Holland, allowing it to operate a “child care and educational service” on the property. Tr. p. 33; App. Ex. No. 13.
11. On November 20, 2004, prior to the purchase of the property, Nurturing’s “Board Meetings-Minutes” state that “the purchase of 835 Sibley is underway.” “Plans to close are set for January, 2005.” Tr. pp. 33-34; App. Ex. No. 14.
12. On December 28, 2004, prior to the purchase of the property, Harris Bank notified Nurturing that it had approved a loan “limited to the lesser of \$350,000 or 80% of the ‘as completed’ appraisal” for the purchase and development of the property. Tr. p. 35; App. Ex. No. 15.
13. On March 16, 2005, the South Holland Fire Department reviewed and approved C.B. Designs’ blueprints for Nurturing, subject to 26 additions/changes. Tr. pp. 35-37; App. Ex. No. 16.

14. On April 12, 2005, Nurturing applied to the Village of South Holland for a building permit for construction on the property. The permit was approved on April 18, 2005. Tr. pp. 37-38; App. Ex. No. 17.
15. On April 22, 2005, Nurturing entered into a contract with Construction Services of Indiana for construction work on the subject property. Tr. pp. 38-40; App. Ex. No. 18.
16. On May 25, June 16, and June 28, 2005, Ms. Bailey met with a representative of “Construction Services of Indiana” on the subject property to monitor the progress of the construction. Tr. pp. 40-42; App. Ex. No. 19.
17. On August 18, 2005, the Village of South Holland granted a license to “Nurturing Development and Learning Center” to provide “child care” on the property. Tr. pp. 43-44; App. Ex. No. 20.
18. The State of Illinois’ “Department of Children and Family Services” granted a license to Nurturing, for a “day care center,” on the subject property, “ages of children served: six weeks to six years,” effective dates August 15, 2005 to February 15, 2006. Tr. pp. 44-46; App. Ex. No. 21.
19. Nurturing opened on the subject property on September 15, 2005 with approximately 40 children. Tr. pp. 50-51, 55-56.
20. The building on the subject property is fully occupied by Nurturing. No space is leased. There are separate rooms for infants, 1-2 year old children, 3 year olds, and 4-5 year olds. Tr. pp. 47-49; App. Ex. No. 22.
21. Nurturing operates another child care center in addition to the one operated on the subject property. A brochure advertising Nurturing’s two centers states that Nurturing

offers full time care, Monday through Friday, from 6:00 a.m. to 6:00 p.m. On the subject property, Nurturing “offers infant care, pre-school and kindergarten beginning 6 weeks to 6 years.” “Income eligible families may apply for tuition subsidies funded by Illinois Action for Children, DCFS, and IDHS. Parents who qualify for any of the above programs may enroll their children upon submitting proper documentation. Parents who meet this criteria shall have their enrollment fees waived.” Tr. pp. 53-55, 71; App. Ex. No. 23.

22. Nurturing’s “Parent Handbook” under the section entitled “Cash Pay,” states that “[A]ll tuition payments are due on Friday prior to your child’s enrollment; and each Friday thereafter. If payment is not received by the close of the day on Friday, a late fee of 10% will be assessed. If payment is still not received by Tuesday morning or written notice provided to Director, your child/children will be excluded from care at [Nurturing] until payment is made including the late fee. On a first come basis, parents who do not meet income eligibility guidelines for supplemental assistance may enroll their child on reduced rates. Note: This option is limited to 20% of current enrollment.” Tr. pp. 60-61, 72; App. Ex. No. 24.

23. Nurturing’s “Parent Handbook” under the section entitled “Co-Payments Including Late Fee,” states that “[A]ll co-payments are due one month in advance, either prior to enrollment (new parents only) or by the close of the day on or before the last Friday of each month. If co-payment remains unpaid after the last day of the month, a late fee of \$10 will be assessed. Children will be excluded from care by the 1st Friday of the month if payment or arrangements have not been made with the Director.” Tr. pp. 60-61; App. Ex. No. 24.

24. Nurturing's "Parent Handbook" under the section entitled "Co-Payments-Hardship" states that [P]arents who are going through financial hardship will have the opportunity to volunteer their time to offset their co-payment or have co-payment admonished [*sic*] for that month by assisting with various activities at the Center. Each parent(s) is limited to no more than two hardships per year." Tr. pp. 60-61; App. Ex. No. 24.
25. Nurturing requires parents to pay a one-time enrollment fee which covers pencils, papers, crayons etc. Tr. pp. 75-77.
26. Nurturing was not accredited by any organization in 2005. Tr. pp. 81-82.

CONCLUSIONS OF LAW:

An examination of the record establishes that Nurturing has not demonstrated, by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption from 2005 real estate taxes for the subject property. In support thereof, I make the following conclusions.

During the 2005 assessment year, Nurturing was in the process of converting the subject property from a "Baker's Square" to a child care center. Nurturing's actual use determines whether the property in question is used for an exempt purpose. "Intention to use is not the equivalent of use." Skil Corp. v. Korzen, 32 Ill. 2d 249, 252 (1965). However, exemptions have been allowed where property is in the process of development and adaptation for exempt use. Illinois Institute of Technology v. Skinner, 49 Ill. 2d 59 (1971); People ex rel. Pearsall v. Catholic Bishop, 311 Ill. 11 (1924). Adapting and developing a property for an eventual and exempt use can be sufficient to satisfy the

actual use requirement. Weslin Properties v. Department of Revenue, 157 Ill. App. 3d 580 (2d Dist. 1987).

The evidence presented at the hearing shows that several activities occurred before the purchase of the property on January 31, 2005. On September 20, 2004, Nurturing sent out a “Notice of Public Hearing” to property owners notifying them of a public hearing to be held October 6, 2004, concerning the proposed use of the property. Tr. pp. 28-30; App. Ex. No. 10. On September 23, 2004, C. B. Designs, Carey Buxbaum, Architect, sent a proposal to Ms. Bailey for architectural services to be rendered in connection with the remodeling and conversion of the building on the property. The fee for this proposal was \$2,600. Tr. pp. 30-31; App. Ex. No. 11. On October 14, 2004, Ms. Bailey received an “Estimate,” in the amount of \$128,480, from Delani Construction, for conversion of the building on the property into a child care center. Tr. pp. 31-32; App. Ex. No. 12.

On November 4, 2004, Nurturing received a “Conditional Use Permit” from the Village of South Holland, allowing it to operate a “child care and educational service” on the property. Tr. p. 33; App. Ex. No. 13. On November 20, 2004, Nurturing’s “Board Meetings-Minutes” state that “the purchase of 835 Sibley is underway.” “Plans to close are set for January, 2005. Tr. pp. 33-34; App. Ex. No. 14. On December 28, 2004, Harris Bank notified Nurturing that it had approved a loan “limited to the lesser of \$350,000 or 80% of the ‘as completed’ appraisal” for the purchase and development of the property. Tr. p. 35; App. Ex. No. 15. These activities were obviously necessary for the development and adaptation of the subject property. However, because the activities were completed prior to Nurturing’s actual ownership of the property, they show an

intention by Nurturing to use the property in an exempt manner, but not an actual exempt use.

Several activities occurred after Nurturing's purchase of the property on January 31, 2005. On March 16, 2005, the South Holland Fire Department reviewed and approved C.B. Designs' blueprints for Nurturing subject to 26 additions/changes. Tr. pp. 35-37; App. Ex. No. 16. On April 12, 2005, Nurturing applied to the Village of South Holland for a building permit for construction on the property. The permit was approved on April 18, 2005. Tr. pp. 37-38; App. Ex. No. 17. On April 22, 2005, Ms. Bailey entered into a contract with Construction Services of Indiana for construction work on the building on the property. Tr. pp. 38-40; App. Ex. No. 18.

I have concluded that the actual development and adaptation of the subject property for possible exempt use began on April 18, 2005, when the Village of South Holland issued a building permit for construction on the property. By that time, Nurturing had secured financing for the construction. Testimony at the evidentiary hearing indicated that Ms. Bailey met with a representative of "Construction Services of Indiana" on the subject property to monitor the progress of the construction on May 25, June 16, and June 28, 2005. Tr. pp. 40-42; App. Ex. No. 19. The issuance of the building permit on April 18, 2005 shows that the project had gone beyond a mere intention to convert the property, and actually constituted development and adaptation of the property for possible exempt use.

Having determined that the subject property was in actual development and adaptation for possible exempt use as of April 18, 2005, the next question becomes whether Nurturing qualifies for exemption for either educational or charitable purposes.

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limits imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

Educational Exemption: Pursuant to this constitutional authority, the General Assembly enacted section 15-35 of the Property Tax Code (35 ILCS 200/1-1 *et seq.*), which allows exemptions for property used for schools and for educational purposes and provides in relevant part as follows:

Schools. All property donated by the United States for school purposes, and all property of schools, not sold or leased or otherwise used with a view to profit, is exempt, whether owned by a resident or non-resident of this State or by a corporation incorporated in any state of the United States. Also exempt is:

* * *

(c) property donated, granted, received or used for public school, college, theological seminary, university or other educational purposes, whether held in trust or absolutely; 35 ILCS 200/15-35(c).

It is well-established that property tax exemption provisions are strictly construed in favor of taxation. Chicago Patrolmen's Association v. Department of Revenue, 171 Ill. 2d 263, 271 (1996). The party claiming the exemption has the burden of proving by clear and convincing evidence that it is entitled to the exemption, and all doubts are resolved in favor of taxation. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491 (1992); Evangelical Hospitals Corporation v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1992).

It is necessary to look at two factors to determine whether a given property constitutes a school or a facility used for “educational purposes” in order to qualify for an exemption under 35 ILCS 200/15-35. First, does the property contain a school offering an established, commonly accepted program of academic instruction? Carpenters' Apprentice and Training Program v. Dept. of Revenue, 293 Ill. App. 3d 600 (1st Dist. 1997). Under this standard, the courts have been inhospitable toward granting an exemption to a school whose curriculum does not consist of traditional subject matter common to accepted schools and institutions of learning. *Id.* at 608. Second, does the program in question substantially lessen what would otherwise have been a governmental obligation, *i.e.*, would the State be otherwise required to offer such a program of study in a tax supported public school? *Id.* at 609.

Both of these criteria received full articulation by the Illinois Supreme Court in Coyne Electrical School v. Paschen, 12 Ill. 2d 387 (1957), where the Supreme Court found that in order for an institution to qualify as a school for purposes of property tax exemption, its course of study must: (1) fit into the general scheme of education founded

by the State and supported by public taxation, and (2) substantially lessen what would otherwise be a governmental function and obligation. *Id.* at 392-93.

In Rogy's New Generation, Inc. v. Department of Revenue, 318 Ill. App. 3d 765 (1st Dist. 2000), the First District Appellate Court applied this two-part test to determine that an organization operating a daycare center did not qualify for an exemption from retailers' occupation tax and use tax on the basis that it was operated for "educational purposes." The court in Rogy's New Generation stated that the fundamental flaw in the taxpayer's case was that the State of Illinois does not provide, nor mandate, education for children under the age of 5.¹ As a result, the taxpayer did not establish that its early childhood learning program fit into the general scheme of education founded by the State. *Id.* at 772. Moreover, because Illinois is not required to provide and does not mandate education for children under the age of 5, there is no government obligation to educate these children and no corresponding public tax burden. *Id.*

It must be noted that since the decision in Rogy's New Generation, Illinois now offers and strongly promotes early childhood education programs. In 2006, the General Assembly passed Preschool for All Children ("Preschool for All") (105 ILCS 5/2-3.71), which is a voluntary, state-funded preschool program for 3 and 4 year olds whose parents want their children to participate. The Preschool for All statute provides in part as follows:

Sec. 2-3.71. Grants for preschool educational programs.

(a) Preschool program.

¹ The Illinois Department of Children and Family Services granted a license to Nurturing to serve children on the subject property from six weeks to six years old. App. Ex. No. 21. Nurturing's floor plan shows a room for "4-5 year olds," but does not show a room for 6 year old children. App. Ex. No. 22. Nurturing opened the child care center on the subject property on September 15, 2005 with 40 children. Tr. pp. 50-51, 55-56. There was no testimony as to whether any of these 40 children were 6 years old or whether Nurturing cared for any 6 year old children during the year at issue.

(1) The State Board of Education shall implement and administer a grant program under the provisions of this subsection which shall consist of grants to public school districts and other eligible entities, as defined by the State Board of Education, to conduct voluntary preschool educational programs for children ages 3 to 5 which include a parent education component. 105 ILCS 5/2-3.71.

Subsections (4) and (4.5) of this provision concern the source and distribution of the funding. “Such funds shall be distributed to achieve a goal of ‘Preschool for All Children’ for the benefit of all children whose families choose to participate in the program.” 105 ILCS 5/2-3.71(4.5). It also states that based on available appropriations, priority for newly funded programs shall be for those serving primarily at-risk children; second priority is given to programs serving primarily children with a family income of less than four times the poverty level. Subsection (5) concerns evaluating children for school readiness prior to age 5 and includes the following: “The State Board of Education shall encourage local school districts and other eligible entities to evaluate the population of preschool children in their communities and provide preschool programs, pursuant to this subsection, where appropriate.” 105 ILCS 5/2-3.71(5).

This statute demonstrates the legislature’s intent to promote preschool education. The statute does not, however, show the legislature’s intent to incorporate preschool education into the general scheme of mandated education for the State of Illinois. Through Preschool for All, the General Assembly clearly recognizes the value and importance of preschool education. Nevertheless, encouraging preschool education and recognizing its importance is not the same as requiring it. The statute does not mandate that every child in this State receive a preschool education, and it does not require the State to provide preschool education for those who want it. It simply provides a possible source of funding for some preschools.

Because the State does not provide, nor mandate, education for children under the age of five, Nurturing is unable to prove that its program “fits into the general scheme of education founded by the State” because similar programs do not exist. Nor can Nurturing prove that its program lessens the tax burden of the public by providing an education which would otherwise have to be furnished by the State. Because education is not required for children under the age of five, there is no governmental obligation to educate these children, and therefore, no corresponding public tax burden to bear.

Assuming, *arguendo*, that similar programs did exist in Illinois and that the State had a burden to provide education for children under 5 years of age, the evidence presented by Nurturing at the hearing falls far short of establishing that Nurturing offers an established, commonly accepted program of academic instruction on the subject property. Nurturing was not accredited by any organization in 2005. Tr. pp. 81-82. The only witness to testify with regard to operations at Nurturing was Ms. Bailey. Ms. Bailey does not teach at Nurturing. Her involvement is “after hours” because she has full-time employment as a special education teacher at Hillcrest High School. Tr. p. 70. Ms. Bailey testified that she set the curriculum for Nurturing to follow. There was testimony that Nurturing uses the ABEKA curriculum, which is a Christian literacy program that entails reading, science, social studies and art. Tr. pp. 67-68.

Ms. Bailey testified that Nurturing has a “curriculum team.” Tr. p. 68. No member of the “curriculum team” testified. No teacher from Nurturing testified. No teacher who worked at Nurturing during the year at issue testified. There was no testimony as to the specific qualifications or degrees required for teachers to teach the ABEKA curriculum and whether Nurturing’s teachers had those qualifications or degrees

in 2005. Ms. Bailey testified that ABEKA is “an approved program that many schools use.” Tr. p. 68. This statement is conclusory, at best. No evidence was presented as to what specific schools use ABEKA. No testimony was offered as to who “approved” ABEKA. No other testimony on ABEKA was offered.

The evidence and testimony was insufficient for me to conclude that the ABEKA curriculum was an established, commonly accepted program of academic instruction. The party claiming an exemption must “prove clearly and conclusively that the use of the property in question is within both the constitutional authorization and the terms of the statute under which the claim of exemption is made.” Coyne Electrical School at 390. The two-part test established in Coyne Electrical School must be met to satisfy the constitutional requirements. *Id.* at 392-393. In addition, all doubts must be resolved in favor of taxation. Evangelical Hospital Corporation, *supra*. Nurturing has failed to prove that the subject property is used for “educational purposes.”

In addition, 35 ILCS 200/15-35 excludes from exemption property that is leased or otherwise used with a view to profit. Nurturing is seeking exemption of the subject property under 35 ILCS 200/15-35(c). In Swank v. Department of Revenue, 336 Ill. App. 3d 851 (2d Dist. 2003), the court was asked to determine whether properties “used with a view to profit,” even if used for educational purposes, are entitled to tax exemption under section 200/15-35(c) of the Property Tax Code. “Stated another way,” does the “used with a view to profit” exclusion of section 35 ILCS 200/15-35 apply to properties falling within the parameters of section 15-35(c). *Id.* at 856. The court held that section 15-35 excludes from tax exemption property held for profit, even if used for school purposes. The court stated explicitly that it declined “to extend tax exemption under

section 15-35 to properties held for profit, even if they are used for educational purposes.” *Id.* at 863.

As discussed previously, Nurturing has failed to prove that the subject property is used for educational purposes. In addition, Nurturing has failed to prove that the subject property is not used with a view to profit. Nurturing caused to be admitted into evidence, without objection from the Department, “Financial Statements and Accountants’ Reports” for fiscal years ended August 31, 2005 and August 31, 2004. Tr. p. 86; App. Ex. No. 26. It must be noted that Nurturing did not open the child care center on the subject property until September 15, 2005. Tr. pp. 50-51, 55-56. Accordingly, the tuition revenue received and expenses incurred after the opening of the facility on the subject property are not reflected in these financial statements. The financial statements show that as of August 31, 2005, Nurturing had \$371,710 in revenue (of which, 93% is from “tuition revenue” and “food program revenue”) and an excess of revenue over expenses of \$64,236. No testimony explaining these amounts was offered at the hearing. Based on the financial statements that Nurturing offered into evidence at the hearing, I must conclude that Nurturing operated its child care center on August 31, 2005 with a view to profit, which is a use proscribed by 35 ILCS 200/15-35.

Nurturing also caused to be admitted into evidence, without objection from the Department, Form 990, “Return of Organization Exempt from Income Tax,” for September 1, 2005 through August 31, 2006. Tr. p. 91; App. Ex. No. 27. This Form 990 would encompass the period after the opening of the child care center on the subject property and accordingly, the tuition revenue received and the expenses incurred after opening the facility would be reflected in the Form 990. However, the Form 990 is not

signed by either an officer of Nurturing or by the “Preparer,” Joseph N. Simmons.²

There is no evidence that the Form 990 was ever filed with the I.R.S. The Form 990 shows “Program Service Revenue” of \$737,718 (of which, 99% is from “tuition revenue” and “food program revenue”) and an excess of revenue over expenses of \$73,968. No testimony explaining these amounts was offered at the hearing. Based on the Form 990 that Nurturing offered into evidence at the hearing, I must again conclude that Nurturing operated its child care centers on August 31, 2006 with a view to profit, which is a use proscribed by 35 ILCS 200/15-35. Nurturing’s request for an exemption under 35 ILCS 200/15-35 must be denied because the subject property is not used for “educational purposes” and the limited financial evidence caused to be admitted by Nurturing at the hearing shows that the child care centers are operated with a view to profit.

Charitable Exemption: 35 ILCS 200/15-65(a) of the Property Tax Code exempts property owned by “institutions of public charity,” “when actually or exclusively used for charitable or beneficent purposes, and not leased or otherwise used with a view to profit.” 35 ILCS 200/15-65(a). Nurturing proved that it purchased the subject property on January 31, 2005. App. Ex. No. 7. I have previously concluded, based on the limited financial evidence caused to be admitted by Nurturing at the hearing, that Nurturing operates its child care centers with a “view to profit.” This use is also proscribed by 35 ILCS 200/15-65(a) and is, in itself, sufficient reason to deny an exemption for charitable purposes for the subject property for assessment year 2005.

² Mr. Simmons testified that Form 990 for the period September 1, 2004 through August 31, 2005 was prepared by him, signed by Nurturing’s management and mailed to the I.R.S. Tr. pp. 87-88. Form 990 for September 1, 2004 through August 31, 2005 was not offered into evidence.

However, in looking further at Nurturing and its use of the subject property, I am unable to conclude that Nurturing is a charitable organization or that its operation of the child care center constitutes charitable use of the property. In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968) (hereinafter Korzen) the Illinois Supreme Court outlined the following “distinctive characteristics” of a charitable institution: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses; and (6) the exclusive (primary) use of the property is for charitable purposes. *Id.* at 157.

The Illinois Supreme Court articulated the criteria in Korzen “to resolve the constitutional issue of charitable use.” Eden Retirement Center v. Dept. of Revenue, 213 Ill. 2d 273 (2004). Courts consider and balance the criteria by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State's burden. DuPage County Board of Review v. Joint Comm's on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461, 469 (2d Dist. 1965).

Nurturing's “Parent Handbook” under the section entitled “Cash Pay,” states that “[A]ll tuition payments are due on Friday prior to your child's enrollment; and each Friday thereafter. If payment is not received by the close of the day on Friday, a late fee

of 10% will be assessed. If payment is still not received by Tuesday morning or written notice provided to Director, your child/children will be excluded from care at [Nurturing] until payment is made including the late fee. On a first come basis, parents who do not meet income eligibility guidelines for supplemental assistance may enroll their child on reduced rates. Note: This option is limited to 20% of current enrollment.” Tr. pp. 60-61, 72; App. Ex. No. 24.

Apparently, some children who attend Nurturing have their child care expenses subsidized by “Illinois Action for Children” the Illinois Department of Children and Family Services and the Illinois Department of Human Services. App. Ex. No. 23. Parents whose children receive subsidized child care may be responsible for a co-payment. Nurturing’s “Parent Handbook” under the section entitled “Co-Payments-Hardship” states that [P]arents who are going through financial hardship will have the opportunity to volunteer their time to offset their co-payment or have co-payment admonished for that month by assisting with various activities at the Center. Each parent(s) is limited to no more than two hardships per year.” Tr. pp. 60-61; App. Ex. No. 24.

I am unable to conclude that Nurturing’s benefits are available to an indefinite number of persons, one of the distinctive characteristics of a charitable organization. Nurturing limits its benefits in the following way: 1) reduced rates for “cash pay” parents are limited to “to 20% of current enrollment;” and 2) parents with subsidized child care who cannot afford co-payments because of financial hardship can assist with activities at Nurturing, but are “limited to no more than two hardships per year.” The provisions of the “Parent Handbook” which limit the availability of charitable assistance are in conflict

with Nurturing's Bylaws which state that "any parent/guardian warranting a waiver of fees due to significant hardship of employment or other shall be granted." Tr. pp. 16-17; App. Ex. No. 4. No explanation was offered for this discrepancy.

There may be sound business and economic reasons for Nurturing to limit assistance to needy families to 20% of current enrollment, if "cash pay," or two hardships per year, if subsidized. However, these policies limiting assistance are indicative of a child care business, rather than a child care charity. Furthermore, Nurturing's limited charitable benefits are not reducing a burden on government. As discussed previously, there is no government obligation to educate children under the age of five, and no corresponding tax burden to be alleviated.

I conclude further that Nurturing places obstacles in the way of those who need and would avail themselves of its limited charitable benefits. There was testimony at the hearing that, whereas Nurturing may reduce its rates for "cash pay" parents, the rates are never entirely waived. Tr. p. 72. Ms. Bailey testified that the rate reductions were not in writing. Tr. p. 73. The brochure that Nurturing uses to advertise its services does not state that rates may be reduced or that parents undergoing financial hardship can assist with activities at Nurturing. App. Ex. No. 23.

In Highland Park Hospital v. Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987), the court found that an Immediate Care Center did not qualify for a charitable exemption because, *inter alia*, the advertisements for the facility did not disclose its charitable nature. The court stated that "the fact is that the general public and those who ultimately do not pay for medical services are never made aware that free care may be available to those who need it." *Id.* at 281. In Alivio Medical Ctr. v. Department

of Revenue, 299 Ill. App. 3d 647 (1st Dist. 1998), where the court denied a charitable exemption for a medical care facility, the court again noted that “Alivio does not advertise in any of its brochures that it provides charity care, nor does it post signs stating that it provides such care.” *Id.* at 652. In order to remove obstacles in the way of those needing charitable assistance, Highland Park and Alvio would require that an organization advertise that charitable assistance is available. Without documentary evidence to show that those needing charity would know that it is available at Nurturing, I must conclude that Nurturing places obstacles in the way of those who need and would avail themselves of the benefits it dispenses.

Nurturing funds are not derived mainly from public and private charity. Nurturing’s “Financial Statements and Accountant’s Reports” for fiscal year ended August 31, 2005 show that 93% of its revenue is from “tuition revenue” and “food program revenue.” App. Ex. No. 26. There was no testimony offered at the hearing as to what is included in “food program revenue.” Nurturing’s Form 990, “Return of Organization Exempt from Income Tax” for the period September 1, 2005 through August 31, 2006 shows that 99% of its revenue was derived from “tuition revenue” and “food program revenue.” App. Ex. No. 27. It is clear that Nurturing does not derive its funds from public and private charity.

I am also unable to conclude that Nurturing does not provide gain or profit in a private sense to any person connected with it or that the funds that Nurturing receives are held in trust for the purposes expressed in its charter. Nurturing’s Form 990, Part II, shows “Compensation of officers, directors, etc.” as \$61,200. However, Part V-A of Form 990 shows the Chairman, Secretary and Executive Director (Ms. Bailey) as

receiving compensation of zero. There was no testimony at the hearing as to which officer(s) or director(s) were paid the \$61,200. Nurturing's Form 990 shows that its largest outlay is for "Other salaries and wages," \$272,385. App. Ex. No. 27. There was no testimony at the hearing as to how many employees are on Nurturing's payroll and their salaries. There was no testimony as to whether employees' children were able to receive child care from Nurturing at reduced rates. Accordingly, there was insufficient evidence and testimony at the hearing for me to conclude that Nurturing does not provide gain or profit in a private sense to persons connected with it.

Nurturing's "Parent Handbook" states that there will be no tuition deductions for absence or holidays except for vacations scheduled during the summer months (June, July and August). "In the event of vacation or illness, ½ week's tuition will be due. If your child is absent the following weeks, the tuition will be ¼ of your usual tuition. If your child comes at least one day out of his/her scheduled week, the full tuition is due. Holidays are counted as days attended." "If your child is not fully potty trained by his/her 3rd birthday, there will be [a] training and diapering fee of \$3.00 per day." "Any check returned or the bank delays payment will be considered a[n] NSF check and will be surcharged [a] rate of \$25.00. If we receive two NSF checks, your tuition will then be on a cash basis." App. Ex. No. 24.

I concluded previously in this Recommendation that Nurturing was operating a child care business, not a child care charity, on the subject property. The above provisions contained in the Parent Handbook are indicative of a business, not a charity. There may be sound business reasons for Nurturing to publish such detailed tuition, fee, payment and collection policies. However, publishing these provisions is "lacking in the

warmth and spontaneity indicative of a charitable impulse” and appears to be “related to the bargaining of the commercial market place.” Korzen, *supra*, at 158.

The brochure which Nurturing uses to advertise its child care services states that parents who meet the criteria for child care subsidies “shall have their enrollment fees waived.” App. Ex. No. 23. Ms. Bailey testified that 20 of the 40 students who enrolled in the child care center on the subject property in 2005 received subsidized services. Tr. p. 59. The Parent Handbook states that the enrollment fees are \$50. App. Ex. No. 24. In 2005 then, Nurturing may have waived enrollment fees totaling \$1,000 (20 students times \$50/student). There was no specific testimony on the dollar amount of charitable contributions by Nurturing in 2005 and the financial statements are silent on this issue.

The \$1,000 waiver of enrollment fees is the only charitable expenditure that I can possibly attribute to Nurturing and to the subject property in 2005. Furthermore, with 93% to 99% of its revenue coming from payment for its child care services, I must conclude that the primary use of the property is not charitable, as 35 ILCS 200/15-65(a) requires. The primary use of the subject property is the exchange of child care services for payment. This payment is made either by the State, co-pays from the parents whose children are subsidized by the State or by parents who pay the full fare. Nurturing may waive some enrollment fees for subsidized parents. The revenue figures and the insignificant charitable expenditures that I can attribute to the subject property clearly indicate that Nurturing is operating a child care business, not a child care charity, on the subject property and that Nurturing is not primarily using the property for charitable purposes.

Property tax exemptions are inherently injurious to public funds because they impose lost revenue costs on taxing bodies and the overall tax base. In order to minimize the harmful effects of such lost revenue costs, and thereby preserve the Constitutional and statutory limitations that protect the tax base, statutes conferring property tax exemptions are to be strictly construed in favor of taxation. People ex rel. Nordland v. Home for the Aged, 40 Ill. 2d 91 (1968). Great caution must be exercised in determining whether property is exempt so that only the limited class of properties meant to be exempt actually receives the exempt status that the Legislature intended to confer. Otherwise, any increases in lost revenue costs attributable to unwarranted application of the charitable exemption will cause damage to public treasuries and the overall tax base. In this case, Nurturing has failed to prove that the subject property falls within the limited class of properties meant to be exempt for educational or charitable purposes.

WHEREFORE, for the reasons stated above, I recommend that the Department's determination which denied exemption to Cook County Property Index Numbers, 29-11-304-017-0000 and 30-08-400-052-0000, on the grounds that the property was not in exempt ownership or use, should be affirmed and these P.I.N.S should not be exempt from 2005 real estate taxes.

April 8, 2008

Kenneth J. Galvin
Administrative Law Judge